

Appendix L – Public Comment Letters

**L-3 Peter Kozelka, Ph.D.
U.S. Environmental Protection Agency
Letter dated May 7, 2002**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

WATER QUALITY
CONTROL BOARD

75 Hawthorne Street

San Francisco, CA 94105-3901

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EPA Region 9 has received the *Draft* staff report for Nutrient Total Maximum Daily Loads (TMDL) for Rainbow Creek and *Draft* Basin Plan Amendment, dated March 22, 2002. These documents address impairment to Rainbow Creek, which is currently on the 303(d) list. This TMDL is designed to ensure attainment of water quality objectives and restore designated beneficial uses.

Here are some specific comments or other areas for revision.

1. The *Draft TMDL*, in section 5.1, states the biostimulatory TMDL for total nitrogen is set at 1507 kg/yr, based on this current load from undeveloped [or background sources] land.

The Regional Board must change its approach to defining the loading capacity and TMDL for total nitrogen. As presented, EPA cannot approve the Rainbow Creek Nutrient TMDL since it has not utilized water quality objectives to establish the loading capacity which ultimately affects the allowable allocations. (See future actions outlined in #5 below.) Therefore the proposed TMDL will not result in attainment of all applicable water quality objectives.

2. Also, the *Draft TMDL*, in section 5.1, utilizes an indirect approach to calculating the loading capacity for total nitrogen. This indirect approach relies on interpretation of the current loading estimate and proportional reduction to define the biostimulatory loading capacity.

EPA Region 9 urges Regional Board staff to *directly* determine the loading capacity by starting with the desired water quality objective(s) and using stream flow records to calculate the loading capacity and TMDLs for total nitrogen and total phosphorus.

3. As a consequence to modifying the loading capacity, the *Draft TMDL* will also need to modify the allocations and margin of safety. These values are dependent on the quantity defined as the assimilative or loading capacity.

EPA Region 9 would support interim allocation levels as part of implementation, as long as the TMDL clearly documents quantitative performance levels associated with desired water quality conditions and potential responses to achieving these interim levels. The attainment of all applicable water quality objectives must be clearly presented in the document.

4. The *Draft TMDL* needs some written revisions. As presented, section 5 does not clearly define the loading capacity for total nitrogen and total phosphorus and present these bottom line values in a

table. Section 5 should be titled "Loading Capacity and Linkage Analysis" to clarify its contents. Also, Table 5-1 should be modified to remove information about current load and interim loading capacity or postpone this table until a later section of the document. Instead Table 5-1 shall define the loading capacity for biostimulatory total nitrogen and total phosphorus.

The first sentence of Section 6.0 is misleading. It could be changed to.....A TMDL is less than or equivalent to the loading capacity after taking into account "allocations for all sources and a margin of safety."

5. The *Draft TMDL* implies the quantity of nutrients from undeveloped land is sufficient to determine the loading capacity and to interpret applicable water quality objectives. This assumption conflicts with 40 CFR 130.2(f) which defines loading capacity as "the greatest amount of loading that a water can receive without violating water quality standards." TMDLs are based on the existing water quality standards. We do not believe the Basin Plan provides an exemption from application of water quality objectives based on the idea that naturally occurring pollutant levels exceed other applicable objectives.

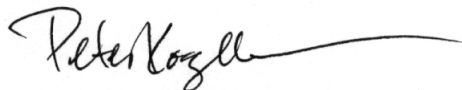
In the future, the Regional Board could address this issue via two options; both would require a Basin Plan amendment:

- a) adopt a different water quality objective for Rainbow Creek, presumably a site-specific value based on credible data, or
- b) define an exclusion for Rainbow Creek from meeting water quality objectives due to naturally occurring sources; again with sufficient rationale.

EPA recognizes the complexity of establishing TMDLs and the desired expediency for developing such strategies for improving water quality in freshwater systems like Rainbow Creek. We anticipate working collectively to produce a coherent and acceptable nutrient TMDL, both to Regional Board members and staff and for EPA approval.

Our most recent discussions (on May 2nd) with you and Lisa Brown, regarding modifications outlined above, provide more confidence that San Diego Regional Board will produce a TMDL that meets requirements outlined in the Clean Water Act and will be approved by EPA Region 9. Please keep us informed with subsequent revisions of the TMDL and appropriate attachments sent to Regional Board members.

Sincerely,



Peter Kozelka, Ph.D.
TMDL Liaison, Water Division